

**CITY OF FREDERICK
ZONING BOARD OF APPEALS
MEETING MINUTES
July 28, 2015**

MEMBERS PRESENT:	STAFF PRESENT:
Mr. Racheff (Absent) Ms. Colby Mr. Patchan Mr. Butcher (Absent) Dr. Ying Mr. Aronow	Rachel Depo, Assistant City Attorney Gabrielle Collard, Division Manager of Current Planning Jeff Love, City Planner Lea Ortiz, Office Manager

ANNOUNCEMENTS

For the benefit of the audience, Ms. Colby, Vice Chairman, introduced everyone by name and department and explained the Zoning Board of Appeals process.

APPROVAL OF MINUTES:

June 23, 2015 ZBA Minutes

MOTION: Mr. Ying moved to approve the June 23, 2015 hearing minutes as published.
SECOND: Mr. Aronow
VOTE: 4-0.

ELECTION OF OFFICERS

Board of Elections of Chairman, Vice Chairman, and Secretary

MOTION: Mr. Patchan moved to continue the Election of Officers to the August 25, 2015 Zoning Board of Appeals hearing.
SECOND: Mr. Aronow
VOTE: 4-0

GENERAL PUBLIC COMMENT

There was no general public comment.

CASE TO BE HEARD

- C. ZBA15-394CU – Conditional Use – 602 Crossover Court,**
Conditional use request to establish an elderly care/assisted living facility in the R6 district per Section 841 of the Land Management Code. **(Jeff Love) (NAC #8).**

MOTION: Mr. Ying moved to continue ZBA15-394CU to the August 25, 2015 Zoning Board of Appeals hearing due to sign posting regulations were not met.
SECONDED: Mr. Aronow
VOTE: 4-0

D. ZBA15-465CU – Conditional Use – 6 South Bentz Street

Conditional use to establish a restaurant with entertainment in accordance with Section 856 of the Land Management Code. (Jeff Love) (NAC #11).

MOTION: Mr. Patchan moved to approve ZBA15-465CU finding that:

1. The policies and regulations found in both the 2010 Comprehensive Plan and the Land Management Code (LMC) support the downtown as a center for arts and entertainment and that the proposed inclusion of entertainment at the existing restaurant is in harmony with these goals.
2. The DB zoning district permits a variety of uses including many that generate a high volume of pedestrian and vehicular traffic. Compliance with the criteria established under Section 856 of the LMC will ensure that the proposed use will not create a greater adverse impact than any use permitted by right in the DB district.
3. The proposed use of the restaurant to include entertainment complies with the provisions of Article 8, Section 856 entitled *Restaurant with Entertainment* based on the following:
 - a. The restaurant sells unpackaged food to the consumers in a ready-to-consume state, in individual servings or in non-disposable containers, where the customer consumes these foods while seated at tables located within the building.
 - b. There is regular seating (not including seats at a counter or bar) for 87.5% of the overall seating capacity.
 - c. That subject to the conditions of approval, the sale of alcoholic beverages and entertainment will not constitute greater than forty (40) percent of the total quarterly revenues.
 - d. The Applicant has indicated that the entertainment to be provided will not include sexual conduct, nudity, or obscenity.
 - e. The Applicant has assured the Board their consent to the conditions of approval and that noncompliance may result in termination of the zoning certificate for a restaurant with entertainment.
 - f. That all activity at the restaurant will comply with Section 15-21 of the City Code.
 - g. That the Applicant has provided guarantees that the use of the property for a restaurant with entertainment will not constitute a nuisance because of noise or other activities associated with the use and that the failure of the owner/managers to consistently abide by all conditions, limitations, and restrictions which may be specified by the Board in granting the conditional use will result in the certificate of occupancy for entertainment being revoked.

With the following conditions of approval:

1. In accordance with Section 312(g), the Applicant must apply for and receive a zoning certificate lawfully establishing the use of a Restaurant with Entertainment within 2 years of the approval or the approval shall become void. The zoning permit application must describe the times and days on which entertainment will be held as approved by the Board
2. The Applicant must submit their quarterly revenues to the Planning Department for the next one year, beginning with the fourth quarter in 2015, to verify compliance with the criteria established under Section 856(c).

SECONDED: Mr. Aronow

VOTE: 4-0

E. ZBA15-456CU – Conditional Use – 2132 Infantry Drive

Conditional use request to establish a home occupation in accordance with Section 829 of the Land Management Code. (Jeff Love) (NAC #3).

MOTION: Mr. Aronow moved to approve ZBA15-456CU finding that:

- 1. Home occupations that comply with Section 829 of the LMC support the Economic Development, Transportation, and Housing elements of the 2010 Comprehensive Plan and that;**
- 2. The inclusion of the home occupation will not create impacts to the community that are greater than those which are normally associated with a residential dwelling unit and that;**
- 3. The proposed home occupation will not create a nuisance due to increased noise, traffic, or other activity associated with the business and that;**
- 4. The home occupation will be secondary to the residential use of the property and that;**
- 5. No signage or storage of materials will occur on the site which result in external evidence that the home is being used for a business; and that**
- 6. There will be no additional vehicular traffic to the site excluding the trips generated by the permitted one (1) daily delivery by UPS, FedEx or other similar services.**
- 7. The proposed home occupation is in harmony with the intent of the Comprehensive Plan and Land Management Code,**
- 8. The proposed home occupation will not have an adverse impact on the neighborhood, and**
- 9. The applicant has satisfied all conditions of Land Management Code Article 829.**

With the conditions that:

- 1. The Applicant applies for and is issued a zoning certificate for the home occupation to reflect the conditional use approval.**
- 2. If there are any documented violations of these conditions, the home occupation will be automatically revoked.**
- 3. That the Applicant provides documentation of licensing from the required agencies to the City within one year from the date of approval or the approval becomes void.**

SECONDED: Mr. Ying

VOTE: 4-0

Ms. Collard read a small portion of the staff report with Mr. Love reading the final portion into the record

Public Comment: There was no public comment.

The meeting adjourned at approximately 8:00 p.m.

Respectfully submitted,

Lea M. Ortiz